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No. 90-1077

In The

Supreme Court of the United States

October Term, 1990

MICHELLE STEPHENSON,

Petitioner,

v.

DEKALB COUNTY DEPARTMENT OF PUBLIC WELFARE,

Respondent.

Petition For A Writ Of Certiorari To The Indiana Court Of Appeals

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Before a court may accept a mother's out of court signature to a "voluntary relinquishment" of her relationship with her children, and thereby permanently terminate that relationship, must it hold a hearing to determine whether the mother's act was, in fact, voluntary?

2. Should the proceeding during which the court accepted the "voluntary relinquishment" (again in the mother's absence) be reported, if a reporter was available?

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The Respondent, DeKalb County Department of Public Welfare, respectfully requests that this Court deny the petition for writ of certiorari to review the judgment and opinion of the Indiana Court of Appeals, requested at 551 N.E.2d 881.

STATEMENT OF THE CASE

Without completely restating the facts of the case, we note there are numerous errors, misstatements, or incomplete statements by Michelle Stephenson in her petition for writ of certiorari that must be addressed. Stephenson alleges that her counsel told her they had only a 10% chance of winning (Pet. for Writ, p. 13) and while in her petition there is a cite to compare R. 658-59; *cf.*, R. 660, there is failure to affirmatively state that her counsel denied making such a statement at those cites.

The same can be said for the allegation that the parents would probably go to jail (Pet. for Writ, p. 14). This was also denied by Stephenson's counsel (R. 660-61). Michelle Stephenson also refers to a letter written by her counsel on the same day as the termination of parental rights. (Pet. for Writ, p. 23). Just prior to the quoted statement there are three paragraphs in the letter which give valuable insight into whether her consent was knowing and voluntary:

> As you are well aware, the DeKalb County Department of Public Welfare and it's (sic) attorney, Kirk D. Carpenter, were prepared to present testimony in support of their termination of your parental rights from 20 witnesses. Those witnesses involved welfare case workers, your neighbors, your employers, several landlords, police, etc. Most destructive of the evidence to be presented was to come from your former landlord, Mr. Witt, who was going to testify concerning his finding drug paraphernalia in your former residence. There was going to be testimony, generally, that the conditions that resulted in the placement of your children with the welfare department had not and would not

be remedied. Further, there was going to be testimony that the welfare department had offered to each of you reasonable services steeped in assisting you in fulfilling your parental obligations to your children which you either failed to accept or the services offered were ineffective in their goal. It was obvious that the welfare department had a planned and well organized scenario for presentation to the Honorable Harold D. Stump, Judge of the DeKalb Juvenile Court.

You people were very perceptive in your observations. You knew that you were running uphill, particularly, in view of the paraphernalia evidence of recent vintage coupled with the evidence of drug usage in you (sic) past. You made the hardest decision that parents could ever make. You voluntarily relinquished your parental rights to Michael Shane Stephenson, Benjamin Jeffery gibson (sic) and Christopher Charles Gibson to the DeKalb County (sic) of Pulic (sic) Welfare thereby ending any and all rights to your children. The Voluntary Relinquishment of Parental Rights were (sic) executed in my presence and I notarized it. Those documents were subsequently presented to the Judge of the DeKalb Juvenile Court and an entry issued reflecting your knowing and voluntary relinquishment of your children to the DeKalb County (sic) of Public Welfare.

You are being given the opportunity to visit with those children for a last time in the not-to-distant (sic) future. Those arrangements were made in the DeKalb County Courthouse library shortly after resolvment (sic) of the issues in this case. It is my understanding that the DeKalb County Department of Public Welfare wants a little time to climatize (sic) the children to this abrupt and permanent change and that they will be notifing (sic) you in the not-to-distant (sic)

> future as to the time and place this last visitation is to take place. Further, you will be given an opportunity to turn over all of the children's toys to them. Steps are being taken to, through a professional photographer, to (sic) provide you with a picture of all of the children. I want to be sure that all of those things are done. You are to notify me should you have any problems in accomplishing those ends. I am sure that you will be doing exactly that.

Petitioner alleges no one told her what her rights were (Pet. for Writ, p. 18), yet there are mentions in the record that she was informed of all of the rights required by statute. (I.C. 31-6-5-3; R. 271-6; R. 677-8).

Stephenson also alleges that nothing in the record refers to or suggests what occurred when the Voluntary Relinquishment of Parental Rights forms were presented to the Court (Pet. for Writ, p. 19). However, the Petitioner correctly quotes from the trial Court's judgment on the very next page of the petition:

> . . . that said parents were notified of their constitutional and other legal rights and of the consequences of their actions under section 3 of I.C. 31-6-5-3; that there is no evidence of fraud or duress to induce said parents to execute said voluntary relinquishment of their parental rights and that said parents are competent to give their consent to the termination of such parent/child relationship. (R. 277).

Finally, Ms. Stephenson's statement of the case fails to point out that the conferences with her attorney and other discussions and occurrences on the day of the termination hearing took all morning, as she admitted during the hearing on the Motion to Correct Errors. (R. 705).

ARGUMENT

I.

STEPHENSON'S PETITION SHOULD BE DENIED BECAUSE THIS COURT DOES NOT RENDER OPINIONS WHICH ARE BASED ON IMPROPERLY PRESENTED FEDERAL QUESTIONS

The questions Stephenson petitions this Court to address were never presented to the Indiana state courts. The first question presented to this court, "Before a court may accept a mother's out of court signature to a 'voluntary relinquishment' of her relationship with her children, and thereby permanently terminate that relationship, must it hold a hearing to determine whether the mother's act was, in fact, voluntary?" was never properly presented to trial court during the (then required) motion to correct errors stage of the case. The only constitutional issue raised in the Motion to Correct Errors was whether she had to be informed of her rights pursuant to statute before she could execute the "voluntary relinquishment" (R. 286). Now she seeks to alter that inquiry. The second question presented by Stephenson, "Should the proceeding during which the court accepted the 'voluntary relinquishment' (again in the mother's absence) be reported, if a reporter was available?" was never even mentioned prior to the Petition for Transfer to the Indiana Supreme Court (R. 286-288; Appellant's Brief to the Indiana Court of Appeals p. 1). Therefore, she argues issues never presented to the trial court or the Indiana Court of Appeals. The Indiana Supreme Court did not pass on the question now argued and transfer was denied.

If a state supreme court gives no opinion and the judgment may have rested on a nonfederal ground, this Court will not take jurisdiction. *Stembridge v. Georgia*, 343 U.S. 541, 547 (1952). The Indiana Supreme Court will only consider constitutional questions which are first raised in the trial court. *City of Indianapolis v. Wynn*, 239 Ind. 567, 582, 159 N.E.2d 572, 573 (1959). Although Stephenson may have urged her questions before the Indiana Supreme Court, they were not properly presented to the court. As in *Stembridge*, the Indiana Supreme Court did not and could not decide the questions which Michelle Stephenson has presented in her petition for writ of certiorari. Therefore, Stephenson like the petitioner in *Stembridge*, has not presented questions which are acceptable to this Court.

II.

THE WRIT SHOULD BE DENIED BECAUSE THE RECORD IS CLEAR THE TERMINATION WAS KNOWING AND VOLUNTARY

The Indiana Court of Appeals found that Stephenson's consent was voluntary and executed without duress. (Pet. for Writ App. D, pp. 13D-14D). The trial court found that she was notified of her constitutional and other legal rights and of the consequences of her action and that there was no evidence of fraud or duress. (R. 277).

Stephenson admits that this is a fact-bound case. Throughout her statement of the case she urges this Court to adopt her construction of the facts even though they are contrary to those found by the trial court and the Indiana Court of Appeals. The record in this appeal,

which did not go to a contested trial, is 742 pages, not counting appellate briefs, appellate decisions, or appellate petitions. The 742 pages relate to the facts that lead directly to the appeal.

The record is clear. From the trial court, to the Indiana Court of Appeals, to the Indiana Supreme Court there has been no finding that the termination was not knowingly, voluntarily, and freely given. Stephenson's appeal to this Court as well as prior appeals amount to nothing more than a change of mind.

CONCLUSION

Wherefore, Respondent respectfully prays that this Court deny Michelle Stephenson's petition for writ of certiorari to the Indiana Court of Appeals.

Respectfully submitted,

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